

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

CHARNAE JONES,

Plaintiff,

v.

**PROVISTA DIAGNOSTICS, INC.
and
TODAS MEDICAL,
and
DANIEL HIRSCH,
In his personal capacity,**

Defendants.

**CIVIL ACTION NO.:
1:22-cv-05134-MLB**

JURY TRIAL DEMANDED

**MOTION FOR LEAVE TO FILE
PLAINTIFF'S FIRST AMENDED COMPLAINT**

COMES NOW Plaintiff, Charnae Jones, ("Plaintiff" or "Ms. Jones"), for good cause shown, hereby files this Motion for Leave to File Plaintiff's First Amended Complaint, pursuant to Fed. R. Civ. P. 15(a) showing as follows:

I. INTRODUCTION AND STATEMENT OF FACTS

Plaintiff, Charnae Jones, filed her Complaint on December 30, 2022, asserting claims of violations in The Fair Labor Standards Act. Plaintiff requested

Defendants to waive service using the Waiver provided by the Court's website.

Returning the Waiver would have allowed Defendants to waive service in exchange for an extension of time to file its answer. Defendants have not returned the Waiver. Therefore, Plaintiff is now tasked with serving the Summons and Complaint on Defendants. Defendant has not yet filed its Answer.

II. ARGUMENT AND CITATION OF AUTHORITY

"A party may amend its pleading once as a matter of course..." Fed. R. Civ. P. 15(a)(1). "within 21days after serving it, or..." Fed. R. Civ. P. 15(a)(1)(A). Prior to Defendant filing an Answer, the standard for amending a complaint is quite liberal. "The court should freely give leave when justice so requires." Fed. R. Civ. P. 15(a)(2).

At this stage, whether to grant leave to amend is evaluated, by the courts, using the liberal standard set out in Fed. R. Civ. P. 15(a). In this case, no Defendant has yet filed its Answer. Defendants were sent, by certified mail, the Waiver of service provided by the court. Defendants have not returned the Waiver. And Defendants have not yet filed an Answer. Therefore, Plaintiff is now tasked with serving Defendants with service of process.

Plaintiff is now requesting leave from the Court to amend Plaintiff's Complaint to include another Defendant and additional Causes of Action including

violations of the Fair Labor Standards Act (“FLSA”) for minimum wage; violations of the FLSA in failure to pay overtime; unjust enrichment; and a state law claim, O.C.G.A. § 13-6-11.

Finally, Plaintiff requests leave to amend because there has not been (1) undue delay, bad faith, dilatory motive, or repeated failure to cure deficiencies by amendments previously allowed; (2) undue prejudice to the opposing party; or (3) “[futility in amending the pleading]” Almanza v. United Airlines, Inc., 162 F. Supp.3d 1341, 1362 (S.D. Ga. 2016), *aff’d*, No. 16-11048, 2017 WL 957191 (11 Cir. Mar. 13, 2017), citing In re Engle Cases, at 1108-09 (quoting Bryant v. Dupress, 252 F.3d 1161, 1163 (11th Cir. 2001)). Indeed, there has been no undue delay, bad faith, dilatory motive, or repeated failure to cure deficiencies present in this case. Further, there is no undue prejudice to the existing Defendants. Accordingly, Plaintiff requests leave to amend her Complaint.

CONCLUSION

WHEREFORE, for good cause shown, Plaintiff respectfully requests that the Court grant this Motion and direct the Clerk to file the proposed First Amended Complaint as set forth in Exhibit “A” herein attached.

Respectfully submitted this 2nd day of February, 2023.

/s/ Beverly A. Lucas

Beverly A. Lucas
Georgia Bar No. 427692
LUCAS & LEON, LLC
P.O. Box 752
Clarkesville, Georgia 30523
beverly@lucasandleon.com

Attorney for Charnae Jones

CERTIFICATION

I do hereby certify that this document has been prepared in Times Roman font, 14 point, in compliance with LR 5.1(C) of this Court.

/s/ Beverly Lucas

Beverly Lucas